

CHAPTER 1

SECTION 5

COMPLIANCE WITH FEDERAL STATUTES

1.0. GENERAL

Contractors shall refer to Federal laws which apply to the administration of TRICARE. In many situations where Federal law is in conflict with the law in the state(s) in which the contractor is based or operating, Federal statute may have precedence. Coordination of benefits under TRICARE is a federal statutory requirement. Conversely, the contractor must apply state law in third party liability (subrogation) cases and in collection of overpayments. Below is information relating to federal statutes which have substantial significance in a contractor's operations. All contractor staff must be educated in matters relating to freedom of information and the privacy rights of the beneficiary.

2.0. FREEDOM OF INFORMATION ACT

2.1. Purpose

The Freedom of Information Act (FOIA) was enacted in 1967 as an amendment to the "Public Information" section of the Administrative Procedures Act. The purpose of the Freedom of Information Act was to reach a workable balance between the right of the public to know and the need of the Government to keep information in confidence, to the extent necessary, without permitting indiscriminate secrecy.

2.2. Policy Of DoD

The policy of the Department of Defense is to make available to the public the maximum amount of information concerning its operations and activities. Procedures by which information is made available to the public have been implemented by the Department of Defense to ensure compliance with the 1974 Amendments to the Freedom of Information Act. The TRICARE Management Activity (TMA) is subject to these provisions, as are TRICARE contractors.

2.3. Procedures

TRICARE Freedom of Information Act procedures require a written request under the Act to be addressed to the Freedom of Information Officer, TMA, 16401 East Centretch Parkway, Aurora, Colorado 80011-9043. The request shall describe the desired record as completely as possible to facilitate its retrieval from files and to reduce search fees which may be borne by the requestor. Normally, no more than ten working days shall elapse after a request has been received by the Freedom of Information Officer before notification is sent that the request has been granted or denied. The administrative time limit for responding to FOIA requests does not begin until the request is received by the TMA Freedom of Information Officer.

2.4. Request For Release Of Information

In response to requests received by contractors for the release of information, unclassified information, documents and forms which were previously provided to the public as part of routine services shall continue to be made available in accordance with previously established criteria. All other requests from the public for release of TRICARE records and, specifically, all requests that reference the Freedom of Information Act shall be immediately forwarded to TMA, ATTENTION: Freedom of Information Officer, for appropriate action. **Direct contact, including interim replies, between TRICARE contractors and such requestors is not authorized.** The contractor shall process requests by individuals for access to records about themselves under the Privacy Act procedures when those procedures are more advantageous to the requestor.

2.5. Requests From The General Accounting Office, etc.

The procedures above apply to the release of records to the general public and are not applicable to requests from the General Accounting Office and other Federal, State, and local governmental organizations. Questions concerning such requests shall be coordinated with TMA. The procedures above, also apply to requests for records by individual Members of Congress who invoke the Freedom of Information Act.

2.6. Records Forwarded To TMA

When a request for a TRICARE record is forwarded to TMA, a copy of the requested record, if in the contractor's custody, shall also be forwarded. The contractor shall provide a completed copy of DD Form 2086, "Record of FOI Case Processing Costs," reporting the direct search and copying charges associated with each request. DD Form 2086, [Figure 1-A-1](#), may be reproduced by the contractor. SD Form 467 may be used in lieu of DD Form 2086.

3.0. THE ALCOHOL, DRUG ABUSE AND MENTAL HEALTH ADMINISTRATION REORGANIZATION ACT, (ADAMHA)

The Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, Public Law 102-321 (enacted July 10, 1992, with an effective date of October 1, 1992) (42 U.S.C. Section 290dd-2) places specific requirements upon Federal agencies (and their agents) for the confidentiality and disclosure of records of the identity, diagnosis, prognosis or treatment of any beneficiary in connection with a drug abuse, alcoholism or alcohol abuse program. The following are the relevant instructions regarding compliance by TRICARE contractors. **(The procedures established below supersede the requirements of the Privacy Act for these records.)**

3.1. General Rules Regarding Confidentiality

Records of the identity, diagnosis, prognosis or treatment of any beneficiary in connection with a drug abuse, alcoholism or alcohol abuse program shall be confidential and shall be disclosed only as authorized in the procedures of 42 CFR Part 2 and shall not otherwise be disclosed in any civil, criminal, administrative or legislative proceeding. This prohibition covers all information about the beneficiary. The penalty for violation of the act or regulations is a fine of not more than \$500 for the first offense and not more than \$5,000 in the case of each subsequent offense.

3.2. TRICARE Contractor Responsibility Regarding Confidentiality Of Alcohol And Drug Abuse Records

The contractor shall establish and maintain procedures and controls for the purpose of assuring the confidentiality of the records of beneficiaries in connection with alcohol and drug abuse programs and for the disclosure of information from the contractor records only as provided in the referenced statutes and regulations and in accordance with the following instructions:

3.2.1. Collection Of Information

When medical information is requested by a TRICARE contractor pertaining to identity, diagnosis, prognosis, or treatment of a TRICARE beneficiary in connection with a drug abuse, alcoholism, or alcohol abuse program, written consent shall be obtained from the beneficiary using the consent form, [Figure 1-A-2](#). The original signed consent form will be maintained with the claim form to which it pertains.

3.2.1.1. Minor Beneficiaries

Where consent is required for collection or disclosure, the consent must be given by both the minor and his parent, guardian, or other person authorized under state law to act in his behalf. The term “minor” means any person who has not attained the age of 18 years or the age prescribed by state law if different than age 18. When state law authorizes treatment of a minor without parental consent, any consent required for disclosure may be given only by the minor. Information regarding state law can be obtained from the state and territorial alcoholism authorities and program directors.

3.2.1.2. Incompetent Beneficiaries

For beneficiaries, other than minors, judged to be incompetent, the consent may be given by the guardian or other person authorized under state law to act in the patient's behalf.

3.2.1.3. Deceased Beneficiaries

When consent is required for collection or disclosure of records of a deceased patient, consent may be obtained from an executor, administrator, or other personal representative of the deceased beneficiary's estate. If such a representative has not been appointed, the spouse, or if none, other responsible family member may give consent.

3.2.2. Disclosure Of Information

When covered information is requested by a person other than the TRICARE beneficiary to whom the records pertain, a written consent will be obtained from the beneficiary using the consent form, [Figure 1-A-2](#), subject to paragraphs [3.2.1.1.](#), [3.2.1.2.](#), and [3.2.1.3.](#) above and the following instructions. The contractor shall maintain the original signed consent form with a copy of the documents disclosed.

3.2.2.1. Disclosure To Beneficiary Or Family Members Or Others

Disclosure to the beneficiary shall be determined in accordance with the procedures set forth in [paragraph 4.8](#). When consent is given, disclosure to family members or any person with whom the beneficiary has a personal relationship may be made unless, in the judgment of the person responsible for the beneficiary's treatment, the disclosure would be harmful to the beneficiary.

3.2.2.2. Disclosure Without Beneficiary Consent

Disclosure without beneficiary consent may be made for scientific research, for management and financial audit, for program evaluation or in compliance with an appropriate order of a court of competent jurisdiction and, in medical emergencies, to medical personnel. In addition to these authorized disclosures, disclosure may be made within and between the Department of Defense (and its agents) and the Veterans Administration. Disclosure of financial information between the Department of Defense (and its agents) and the Department of Health and Human Services is permitted under the management and financial audit or program evaluation provisions.

3.2.2.3. Prohibition On Redisclosure

Whenever a written disclosure is made, except to a program or person subject to 42 Code of Federal Regulation, Part 2, the disclosure shall be accompanied by a written statement as follows:

"Prohibition on redisclosure: This information has been disclosed to you from records whose confidentiality is protected by Federal Law. Federal Regulations (42 CFR Part 2) prohibit you from making any further disclosure of this information except with the specific written consent of the person to whom it pertains. A general authorization for the release of medical or other information, if held by another party, is **not** sufficient for this purpose. Federal regulations state that any person who violates any provision of this law shall be fined not more than \$500 in the case of a first offense and not more than \$5,000 in the case of each subsequent offense."

NOTE: This statement shall either appear on correspondence transmitting the documents or be stamped on the first page of the documents disclosed. (A program or person is subject to the confidentiality requirements of 42 CFR Part 2 if records are maintained for any alcohol abuse or drug abuse function which received federal funds or is conducted by a federal agency, requires a federal license or authorization or has a tax-exempt status.)

3.2.3. Other Disclosures

3.2.3.1. Requests for disclosures in situations not specified above shall be made only with the written authorization of the Office of General Counsel, TMA.

3.2.3.2. For information regarding state and territorial alcoholism authorities and program directors contact:

National Clearinghouse for Alcohol Information

P. O. Box 2345
Rockville, MD 20852
Telephone: (301) 468-2600

National Institute on Alcohol Abuse and Alcoholism

Division of Resource Development
State Assistance Branch
5600 Fishers Lane
Rockville, MD 20857

4.0. **PRIVACY ACT**

4.1. **General**

The Privacy Act imposes legal responsibility on the Department of Defense (DoD) and TRICARE contractors to assure that personal information about individuals collected in TRICARE records is limited to that which is legally authorized and necessary, and the personal information is maintained in a manner which assures its confidentiality. This section sets forth the basic guidance concerning Department of Defense implementation of the Privacy Act and contractor responsibility for compliance. However, in administration of a medical benefit program some common sense must be applied in responding to correspondence. Although the Privacy Act restricts disclosure of personal information outside the agency (Department of Defense and contractors), such restrictions do not justify non-response to inquiries or other Program correspondence. The following are the relevant instructions regarding compliance with the Privacy Act (Title 5, United States Code, Section 552a) as implemented by DoD Regulation 5400.11-R applies to TRICARE. Contractors operating a TRICARE claims or health care system are responsible for compliance. To the extent the following procedures conflict with the procedures set forth in [paragraph 3.0.](#), these procedures in [paragraph 3.0.](#) take precedence over the Privacy Act procedures. Questions concerning the release of information pertaining to deceased beneficiaries shall be referred to TRICARE Management Activity (TMA), Office of General Counsel.

4.2. **Privacy Act Requirements**

The Privacy Act of 1974 requires agencies to:

4.2.1. Publish in the **Federal Register** annual notice of the existence and character of any system of records from which information is retrieved by some personal identifier.

4.2.2. Itemize in the public notice the “routine uses” of the records contained in a system of records, including the categories of users and the purpose of such use. No other use or disclosure of the information shall be made without the express written consent of the individual to whom the record pertains.

4.2.3. Establish procedures for granting individuals access to records or information pertaining to them and for reviewing requests from individuals concerning the amendment

of any records pertaining to them. A requester may ask the agency to review the agency's initial adverse determination. If the review is again adverse the agency then must advise the requester of his/her right to seek judicial review.

4.2.4. Establish procedures governing the collection, safeguarding and maintenance of personal information.

4.3. Policy Of Department Of Defense (DoD)

The policy of DoD is to preserve the personal privacy of individuals, permitting an individual to know what records pertaining to him or her are collected, maintained, used, or disseminated in the DoD, to other individuals or entities and to have access to and have a comprehensible copy made of all or any portion of such records, in accordance with applicable laws and regulations. Concomitantly, DoD activities shall collect, maintain, use or disseminate any record of an identifiable personal nature in a manner which assures that such action is necessary and lawful; that any information collected is accurate, relevant, timely, and complete as is reasonably necessary to assure fairness to the individual, and that adequate safeguards are provided to prevent misuse or unauthorized release of such information.

4.4. Definitions Of Key Terms

4.4.1. Individual

An individual is a citizen of the United States or an alien lawfully admitted for permanent residence. This status applies only to living persons. The Act does not cover entrepreneurs by the term "individual." Thus, physicians and other sources of care, when acting in their professional business capacity, are not "individuals" under the Privacy Act. To be subject to the Act, information maintained must in fact be **personal** in nature, and the individual must be dealt with in a personal, not an entrepreneurial role. A legal guardian or the parent of a minor, with certain exceptions, has the same rights as the individual and may act on behalf of the individual. A letter from an attorney stating that he/she represents a beneficiary or provider is sufficient to authorize the agency to release information under the Privacy Act. It would be a violation of professional ethics for an attorney to indicate that he/she represents an individual when in fact that is not true. Because of this standard of professional ethics, the agency can rely on the attorney's statement of representation.

4.4.2. Record

A record is any item, collection, or grouping of information about an individual which is maintained (collected, used or disseminated) by TMA or a TRICARE contractor, including, but not limited to, his or her education, financial transactions, medical history, and criminal or employment history, and which contains the individual's name or the identifying number, symbol, or other personal identifiers.

4.4.3. Beneficiary History And Deductible Files

This term includes, but is not limited to, any record of claims or billings for medical, hospital or related services, application or approval forms which reflect diagnoses, treatment or medical conditions, family history files, or any other correspondence,

memorandum or report reflecting these data with respect to any individual which are acquired or used by the contractor in the development and processing of claims or in carrying out the other functions under the TRICARE contract.

NOTE: The term “TRICARE Contractor Claims Records” is used by the National Archives and Records Service (NARS). The terms “Beneficiary History and Deductible Files” and “TRICARE Contractor Claims Records” both apply to the same documents.

4.4.4. Routine Use

With respect to the disclosure of a record or the use of such record for a purpose which is compatible with the purpose for which it was collected, “routine use” of Beneficiary History and Deductible Files has been specified as follows:

“The TMA and TRICARE contractors use the information to review for payment of medical care; for control and approval of medical treatments and interface with providers of health care; to respond to inquiries from Congressional offices made at the request of the individual covered by the system; to control and accomplish reviews of utilization; for review of claims related to possible third-party liability cases; for referral to Peer Review Committees or similar professional review organizations to control and review providers of health care; for disclosure to third-party contacts (without the consent of the individual to whom the information pertains) in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning the individual’s eligibility for benefits under TRICARE, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal; to respond to an individual’s inquiry concerning TRICARE; for the issuance of deductible certificates; for referral to the Secretary of the Department of Health and Human Services or the Administrator of the Veterans Administration, consistent with their statutory administrative responsibilities under TRICARE; for referral to the Department of Justice, state law enforcement or regulatory agencies, or foreign law enforcement agencies for investigation and possible criminal prosecution; and, for referral to the Department of Justice for representation of the Secretary of Defense in civil actions.”

4.5. Beneficiary History And Deductible Files

Operation of a TRICARE health care delivery and/or claims processing system includes maintenance of a decentralized segment of the TRICARE systems of records known as “Beneficiary History and Deductible Files.” TRICARE contractors are obligated to comply with the requirements of the Privacy Act in the collection, use and dissemination of information contained in the systems of records.

4.6. Confidentiality Of Beneficiary History And Deductible Files

The contractor shall establish and maintain procedures and controls for the purpose of assuring that the confidentiality of the Beneficiary History and Deductible Files is maintained at all times and that information is disclosed solely and strictly in accordance with the provisions of the Privacy Act of 1974 and DoD Regulation 5400.11-R.

4.7. Collecting Information

4.7.1. The Privacy Act requires personal information to be collected, to the greatest extent practicable, directly from the individual when the information may result in adverse determinations about an individual's rights, benefits, or privileges under Federal programs. The collection of information from third parties shall be minimized except where the nature of the information is such that there is a need to obtain it directly from a third party, or to obtain verification from a third party.

4.7.2. When obtaining information from an individual, a **Privacy Act Statement** shall be provided to the individual advising of the authority for soliciting the information, the principal purposes for which it will be used, the routine use to be made of it, whether furnishing the information is mandatory or voluntary and the effect on the individual for not providing the information. The appropriate Privacy Act Statement must be included in any distribution of TRICARE claim forms by the TRICARE contractor. TRICARE claim forms, incorporate the Privacy Act Statement.

4.7.3. Claims received by the contractor which do not contain an indication that the claimant was aware of the Privacy Act will, nevertheless, be processed for payment. However, if additional information concerning a claim is required, the request to the individual must include a copy of the appropriate Privacy Act Statement. When information is collected by **telephone**, a brief oral explanation of the Privacy Act shall be given to the individual.

4.8. Access To Contractor Records Under The Privacy Act

4.8.1. The contractor must devise and describe procedures by which an individual is permitted access to records pertaining to him or her. Upon request, an individual must be informed whether or not the Beneficiary History and Deductible Files contain a record pertaining to him or her. And, if the individual so desires, he or she shall be permitted to review such record and to be accompanied for the purpose of reviewing the record by a person of his or her choice. Further, an individual is permitted to obtain a copy of such record in a form which is comprehensible to him or her.

4.8.2. Granting individual access to a record containing his/her personal information shall not be conditioned upon any requirement that the individual state a reason or otherwise justify the need to gain access. However, the requester shall be required to provide such information as is necessary to determine generally where and how to look for their records. The individual shall also be required to provide reasonable verification of his or her identity prior to being granted access to personal information. Parents or legal guardians shall be required to verify both their identity and their relationship to a minor or a legal incompetent. In addition, since most records in the Beneficiary History Files relate to medical information, an individual may be required to submit a written request for access to the file. This allows

the contractor time to review the medical information in accordance with the following procedures to determine if direct access by the individual to the medical information would have an adverse effect on the individual. A physician or a responsible officer (if no physician is available at the site of access) shall determine to the best of his or her ability whether disclosure to the requesting individual is likely to have an adverse effect on the individual's physical or mental health. If it is determined that disclosure will not likely have an adverse effect, the medical record shall be disclosed to the individual. If a physician determines that disclosure might have an adverse effect on the individual, the individual shall be requested to designate, in writing, a **physician** to whom the information may be transmitted. However, the individual should be advised that the designation of a physician to receive the requested records, and at the discretion of the physician, to determine whether the requested records should be released to the requester, does not constitute an authorized TRICARE benefit. Any physician's fee for such service will not be cost-shared as a TRICARE benefit. Notice of the absence of cost-sharing should also be given to the physician when the records are forwarded to the designated physician.

4.8.3. Although a parent or guardian of a minor may request notification of, or access to, medical records of the minor on behalf of the minor, a parent or guardian will not be granted direct access to the minor's medical record. For the purposes of the Privacy Act, the term "minor" means any person who has not attained the age of 18 years. A parent or guardian will be asked at the time of the request to designate a physician to whom the record can be released. The physician will determine whether the requested records should be released to the requester. The parent or guardian will be advised by the contractor that the designation of the physician to receive the requested records does not constitute an authorized TRICARE benefit and any physician's fee for such service will not be cost-shared as a TRICARE benefit. A copy of the request and the medical record of the minor shall then be forwarded to TMA for appropriate action. The parent or guardian will be notified of this action by the contractor.

4.8.4. Information from the Beneficiary History and Deductible File shall be released to authorized representatives of the individual concerned, upon written request of the individual (parent/guardian) as appropriate. If the individual concerned is mentally incompetent, insane, or deceased, the next of kin or legal representative must authorize, in writing, the release of the individual's records. Any written authorization to release records must be incorporated in the accounting for disclosures discussed below.

4.8.5. Requests for information or records must be **acknowledged** within ten working days from the date of receipt. An individual's request for access to records pertaining to him or her shall receive concurrent consideration both under the Privacy Act and the Freedom of Information Act, if appropriate. The requested information must be furnished within 30 working days unless good cause exists to delay furnishing the record, in which case the individual will be informed in writing within the 30 working days of the reason for delay and when it is anticipated that the information will be furnished.

4.9. Corrections To Records

4.9.1. An individual is permitted by the Privacy Act to request correction of any record pertaining to him or her. Requests should be in writing and contain, as a minimum, sufficient identifying information to enable location of the record, a description of the items to be amended and the reason amendment is being requested.

4.9.2. TRICARE contractors shall implement procedures for reviewing records at the request of individuals concerned and develop and implement procedures for making corrections, if appropriate. Whenever practicable, contractors shall complete the review and advise the individual of the decision to amend the record within ten working days of receipt of the request. Otherwise, a written acknowledgment of receipt of a request for amendment must be provided within ten working days after receipt, with notification of a decision to amend the record furnished within 30 working days of receipt of the request.

4.9.3. If a contractor agrees with allowing any portion of the individual's request to amend a record, it shall amend the record accordingly. In addition, all previous recipients of the uncorrected record, including those recipients identified by a disclosure accounting as required below, shall be advised of the amendment and of the substance of the correction.

4.9.4. If the TRICARE contractor does not agree to amend the record as requested, the individual shall not be advised of the decision. Rather the individual's request for amending the record, together with a copy of the record and the contractor's written explanation of the reason(s) for not amending the record, shall be sent to TMA, ATTENTION: Office of General Counsel, within ten working days of the decision as prescribed in [paragraph 4.9.2.](#) above. Written acknowledgment of receipt of the request for amendment will be provided to the individual.

4.10. Accounting For Disclosures

4.10.1. Except for routine disclosures, no record contained in the Beneficiary History and Deductible Files shall be disclosed to any person or to any agency outside DoD, without the prior written consent or request, of the individual to whom the record pertains. Contractors shall disclose records contained in the Beneficiary History and Deductible Files to officials and employees of DoD and to officials and employees of TRICARE contractors who have a need for the record in the performance of their duties, provided the use is compatible with the purpose for which the record is maintained. The routine use of information contained in the Beneficiary History and Deductible Files has been set forth in [paragraph 4.4.3.](#), above. Certain other routine uses have been authorized by the Privacy Act, which, in summary, include disclosures to the Bureau of the Census, disclosures for statistical research and reporting, disclosures to the Congress, disclosures to the General Accounting Office, and disclosures pursuant to court order. Disclosures to persons or agencies which would not amount to a routine use as set forth above will be made by the contractor only with the written authorization of TMA.

4.10.2. Except for disclosures made to officials and employees of DoD and TRICARE contractors as described above, the Privacy Act requires an accurate accounting for all other disclosures of personal data. Disclosures which must be accounted for under the Privacy Act are of two types, routine and nonroutine. Under either type, a record must be kept of the name and address of the person and, if appropriate, the agency to whom the disclosure is made, the date, nature, and purpose of each disclosure. In addition, accounting for nonroutine disclosures shall also contain the consent of the individual to whom the record pertains. Nonroutine disclosures include all disclosures made outside DoD and TRICARE contractors which are not otherwise identified as routine. The accounting need not include a notation on each separate document of every disclosure of a particular record, provided the contractor can construct from its system the required accounting information when required by the individual, when necessary to inform previous recipients of any amended records, or

when providing the justification or basis upon which the disclosure was made (i.e., an individual to whom a record pertains is entitled, upon request, to all information on the accounting of disclosures, except disclosures made for law enforcement purposes). Accounting records for routine and nonroutine disclosures must be retained for at least five (5) years after the last disclosure or the life of the basic record, whichever is longer.

4.11. Employee Training

4.11.1. In the event of violations of the Privacy Act, a civil action may be brought against DoD when a violation concerns the design, development or operation of a system of records on individuals to accomplish an agency function. Criminal penalties can be imposed upon the officers and employees of DoD when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Privacy Act, when a TRICARE contractor maintains the Beneficiary History Files to accomplish a TRICARE function, the contractor and any employee of the contractor will be viewed as employees of the Department of Defense.

4.11.2. Administrative and physical safeguards to protect Beneficiary History and Deductible Files from unauthorized or unintentional access, disclosure, modification, or destruction, must be employed by contractors. All persons whose official duties require access to or processing and maintenance of personal information should be advised of the proper safeguarding and use of such information. In addition, all employees should be aware of their responsibilities under the Privacy Act. Any officer or employee of the contractor who:

- Willfully discloses individually identifiable information from the Beneficiary History and Deductible Files, in violation of the Privacy Act, shall be guilty of a misdemeanor and fined not more than \$5,000; or,
- Willfully maintains through performance of the TRICARE contract, a system of records not included in the Beneficiary History and Deductible Files shall be guilty of a misdemeanor and fined not more than \$5,000.

4.12. General Correspondence

4.12.1. In responding to general correspondence, the reply should be sent to the **beneficiary** regardless of who made the inquiry. If a spouse or other family member makes an inquiry concerning a beneficiary's claim, etc., the inquiry should not be returned to the spouse or family member unanswered. Rather, a reply should be addressed to the beneficiary with an explanation that under the Privacy Act the reply could not be made to the spouse or family member who made the inquiry. Also, if an inquiry is made by the beneficiary, including an eligible family member regardless of age, the reply should be addressed to the beneficiary, not the beneficiary's spouse (service member) or parent. The only exceptions are when a parent writes on behalf of a minor child (under 18 years of age) or when a guardian writes on behalf of a physically or mentally incompetent beneficiary. However, in responding to a parent of a minor or guardian of an incompetent, the Privacy Act precludes disclosure of sensitive information (e.g., abortion, alcohol and drug abuse, venereal disease, etc.) or information which, if released, would have an adverse effect on the beneficiary. In such cases, the procedure outlined in [paragraph 4.8](#) shall be followed.

4.12.2. When a reply is made to the beneficiary, the reply should be fully responsive to the inquiry (reasonable charge, etc.) whether or not the query was originally made by the beneficiary. Copies of the response shall NOT be sent to any family member, spouse or other person who may have made the inquiry.

4.13. Release Of Information To Members Of Congress

4.13.1. In accordance with the DoD policy of making maximum information concerning its operations and activities available to both Government officials and to the public in general, TMA and TRICARE contractors will answer constituent's letters to Members of Congress as fully as possible.

4.13.2. Information requested by Members of the Congress for the constituents shall be handled in the same manner as if the beneficiary had written directly to TMA or the TRICARE contractor. If it develops that the information cannot be released, the Member of the Congress requesting the information shall be advised promptly of that fact and of the reasons for the determination.

4.13.3. Responding to a Congressional office from the record of an individual in response to an inquiry from the Congressional office at the request of that individual (beneficiary), has been established as a routine use of the Beneficiary History and Deductible Files. However, in those cases in which the Congressional inquiry indicates that the request is being made on behalf of a person other than the individual whose record is to be disclosed (e.g., a spouse or family member 18 years of age or older), the contractor shall advise the Congressional office that written consent of the beneficiary is required. A verbal statement from a Congressional staff member that written consent was obtained from the individual to whom the record pertains or from the parent in the case of a beneficiary under age 18, is sufficient for the contractor to release the requested information. The contractor shall not contact the beneficiary unless the Congressional office requests that it be done. Similarly, a record of an individual which would not be releasable directly to the individual (e.g., a medical record which would have an adverse effect on the individual) cannot be released directly to the Congressional office making the inquiry on behalf of the individual. Instead, the Congressional office shall be advised of the procedure for release of such record. Of course, in those cases where a contractor can respond to a Congressional request for assistance on behalf of an individual, without disclosing personal information which would fall under the Privacy Act, the contractor shall comply.

4.13.4. Replies to all Congressional inquiries and requests shall be completely responsive and handled as expeditiously as possible. Should it become evident that a response to a request cannot be made within 15 working days, an interim reply will be sent. The interim reply will indicate the anticipated date of completion and the steps being taken to obtain the information requested.

4.14. Disclosure Within The Agency

4.14.1. The Privacy Act prohibits the disclosure from TRICARE records of information concerning a beneficiary without the beneficiary's written consent except for "routine uses" as directed by the agency or disclosures made to officials and employees of the Department of Defense (including TRICARE contractors) who have a need for the record in the

performance of their duties, provided the use is compatible with the purpose for which the record is maintained.

4.14.2. Paragraph 4.4.4., defines “routine uses” with respect to disclosure of TRICARE records. TRICARE contractors should be aware that TRICARE Health Benefit Advisors (HBAs) and Uniformed Services claims officers are employees of the Department of Defense authorized to receive information from TRICARE records if they have a need for the information in the performance of their duties. A TRICARE HBA who is assisting a beneficiary may receive TRICARE information pertaining to that beneficiary. If there is some reason to question release of the information, a request can be made for the beneficiary’s written consent. The restriction on disclosure of only that information directly releasable to the beneficiary also applies to the HBA.

4.15. Appeals

Guidance for handling general correspondence also applies to appeal cases, except that a designated “representative” (as defined in [32 CFR 199.10](#)), may be communicated with on the same basis as the individual beneficiary. However, unless the representative is an attorney, a written statement from the beneficiary appointing the representative is required. (See [Chapter 13, Section 1](#), for requirements.)

5.0. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

5.1. Title VI of the Civil Rights Act of 1964 provides that no person shall, on the grounds of race, color or national origin, be excluded from participation under any program or activity receiving Federal financial assistance. All Federal departments and agencies extending such assistance are required to ensure that institutions or facilities participating in these Federally-assisted programs do not discriminate against beneficiaries or employees on the grounds of race, color or national origin. Hospitals, skilled nursing facilities, residential treatment centers and special treatment facilities determined to be authorized providers under TRICARE are subject to the provisions of Title VI.

5.2. Investigating complaints of noncompliance with Title VI is a function of the Office of Civil Rights of the Department of Health and Human Services (DHHS). Any discrimination complaints involving Title VI that are received by contractors should be forwarded to the Office of Civil Rights, DHHS, North Building, 330 Independence Avenue, S.W., Washington, DC, 20003. A copy of the material sent to the Office of Civil Rights must also be sent to TMA, Office of General Counsel, 16401 East Centretech Parkway, Aurora, Colorado, 80011-9043.

6.0. SECTION 504 OF THE REHABILITATION ACT OF 1973

Section 504 as amended, states that no otherwise qualified handicapped individual shall, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. All Federal agencies extending such assistance are required to ensure that both individual professional providers and institutions participating in these Federally-assisted programs do not discriminate against beneficiaries or employees on grounds of a handicapping condition. Any discrimination complaints involving Section 504 that are received by contractors shall be forwarded to TMA within two working days of receipt.

